

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHERRI WICKHAM)	
Claimant)	
VS.)	
)	
FAITH VILLAGE, INC.)	Docket Nos. 190,122
Respondent)	and 190,515
AND)	
)	
KANSAS CITY FIRE and MARINE INSURANCE)	
COMPANY, and)	
CRUM & FORSTER COMMERCIAL INSURANCE)	
COMPANY)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and one of its insurance carriers, specifically, Crum & Forster Commercial Insurance Company appeal from an August 15, 1994, Order of Administrative Law Judge Alvin E. Witwer granting claimant's request for benefits.

ISSUES

On appeal, respondent and its insurance carrier contend the Administrative Law Judge exceeded his jurisdiction in granting benefits because the evidence fails to establish that claimant is entitled to temporary total disability compensation and medical treatment at the expense of respondent and Crum & Forster Commercial Insurance Company. Specifically, respondent denies that claimant sustained her burden of proving that she sustained personal injury by accident arising out of and in the course of her employment

on February 15, 1994 and, second that she is in need of temporary total disability and medical treatment as a result of that alleged injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, considering the oral argument and briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding of the Administrative Law Judge in Docket Number 190,122 that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent on February 15, 1994, should be affirmed. On that date, while claimant was assisting a resident to bed, she aggravated a preexisting low back injury. Respondent alleges that any symptoms suffered by claimant on February 15, 1994, and afterwards were simply a continuation of the same symptoms claimant had been experiencing prior to that time. Respondent points to the Olathe Medical Center emergency room records, as well as certain other medical records, which fail to contain any mention of a separate and distinct incident occurring on February 15, 1994. However, a March 2, 1990, report of Occupational Health Centers contains a history of injury that claimant, while putting a resident to bed, felt a pull and bad pain in her back and leg. Also, claimant's testimony supports a finding of an aggravation as a result of that incident as opposed to a mere continuation of symptoms or temporary flare-up in her preexisting condition, even though she had not recovered from her previous injury and was continuing to experience symptoms from the December 10, 1993 work-related incident.

Taking the record as a whole, the Appeals Board finds that claimant did suffer an accidental injury arising out of and in the course of her employment with the respondent on February 15, 1994.

Respondent and Crum & Forster Commercial Insurance Company also argue claimant has not sustained her burden of proving a need for temporary total disability compensation and medical treatment related to her alleged injury. Having found claimant did sustain her burden of proving that she suffered personal injury by accident arising out of and in the course of her employment on February 15, 1994, the remaining issues concerning preliminary hearing benefits of temporary total disability compensation and medical treatment are not jurisdictional issues enumerated in K.S.A. 44-534a(a)(2). The issue of causation having been decided, the payment of temporary total disability compensation and medical do not otherwise give rise to allegations that the Administrative Law Judge exceeded his jurisdiction so as to permit review pursuant to K.S.A. 44-551. As stated in numerous prior decisions of the Appeals Board, before the Board may review a preliminary hearing finding, it must either pertain to one of the jurisdictional issues listed in K.S.A. 44-534a(a)(2), or an Administrative Law Judge must otherwise have exceeded his or her jurisdiction and authority. K.S.A. 44-551. Therefore, the appeal of these issues should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer dated August 15, 1994, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: J. Lawrence Louk, Olathe, Kansas
Michael J. Joshi, Kansas City, Missouri
Gary R. Terrill, Overland Park, Kansas
Scott K. Logan, Prairie Village, Kansas
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director